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AVIATION RELATIONS BETWEEN THE UNITED STATES AND CANADA PRIOR TO NEGOTIATION OF THE AIR NAVIGATION ARRANGEMENT OF 1929

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On May 27, 1920 the British Ambassador transmitted to the Department of State, at the request of the Canadian Government, a copy of two temporary regulations adopted by the Canadian Air Board affecting American pilots and aircraft. The British Ambassador stated that the situation at that time was that while Canada had taken action to enact air regulations governing aerial navigation in Canada, based on the convention relating to international air navigation (of October 13, 1919), such action on the part of the United States was still pending.

The British Ambassador stated that the effect of the temporary regulations passed by the Air Board was that United States pilots and aircraft would be permitted to fly in Canada until November 1, 1920, under the same conditions as would obtain if the government of the United States had passed regulations similar to those of the Dominion of Canada. The regulations referred to by the British Ambassador which constituted an amendment, adopted by the Canadian Air Board on May 17, 1920, to the Canadian Air Regulations were as follows:

(1) "That pending the organization of a body in the United States of America having authority to issue civil certificates to air personnel, and until the first of November, 1920, qualified American military pilots be excepted from the provisions of paragraph 33 of the Air Regulations, 1920, so far as is necessary to put them in the same position with regard to flying in Canada as if they were the holders of certificates from the Government of the United States, that is, in the position of being entitled to fly United States aircraft in Canada but not to carry passengers or goods for hire."

(2) "That pending the organization of a body in the United States of America having authority to issue Registration Certificates for aircraft and until the first day of November, 1920, aircraft which would under the Convention relating to International Air Navigation be registered in the United States of America be excepted from the provisions of Para. 3 of the Air Regulations, 1920, provided, that,—

(a) full particulars of the aircraft are furnished;

(b) the aircraft is marked in accordance with the Regulations with a nationality and registration mark of which the first letter is the letter "N" and the second letter is the letter "C";

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- (c) if such aircraft is one which under the Regulations would require a certificate of airworthiness, a temporary certificate of airworthiness is issued;
- (d) in all cases the same fees are paid as in the case of Canadian aircraft."

Although the period during which American pilots and aircraft were permitted to enter Canada under the conditions indicated in the note of May 27, 1920 from the British Ambassador expired on November 1, 1920, the Canadian Government renewed this permission from time to time until negotiations were begun for the conclusion of the arrangement of 1929 which is now in force. The renewal was usually made every six months, although there were several renewals for periods of one year each. On a number of occasions the Canadian authorities inquired toward the end of one of these periods whether the Government of the United States desired an extension of the arrangement for an additional period and on other occasions action in the matter of requesting a renewal was initiated by the Government of the United States. On several occasions the Department of State referred to legislation then pending in Congress which would provide for the licensing of pilots and the issuance of certificates of airworthiness and stated that by the passage of such legislation provision would be made for the carrying out of such regulations as would obviate the necessity of continuing in force the kind of an arrangement then applicable to American pilots and aircraft entering Canada.

In a memorandum by the Acting Deputy Minister of Militia and Defence at Ottawa, dated October 2, 1922, transmitted to the Department of State by the British Ambassador on October 13, 1922, reference was made to the International Convention Relating to the Regulation of Air Navigation of 1919 in the following paragraph which explained why the Canadian Government was not then in a position to negotiate a reciprocal air navigation agreement with the United States, pending the negotiation of which the Canadian Air Board had passed on May 17, 1920, an amendment to the Air Regulations designed to grant American pilots and aircraft every facility for flying in Canada. The paragraph in question read:

"The United States has not ratified this Convention and has so far passed no legislation dealing with the control of aviation, nor has it taken steps to authorize any regulating body with control over civil aviation. Until such a body is created it will not be possible to negotiate an agreement with the United States Government in regard to inter-state flying between the two countries."

During the course of the several extensions of the periods during which American pilots and aircraft were permitted to enter

Canada under a temporary arrangement some changes in the requirements were proposed by the Canadian authorities and accepted by the authorities of the Government of the United States.

The memorandum of October 2, 1922 from the Ministry of Militia and Defence at Ottawa was furnished in response to a request by the Government of the United States for a restatement of the conditions under which American military and commercial aircraft would be permitted to make flights in Canada. The memorandum contained information in regard to the procedure to be followed by American military, commercial and private aircraft entering Canada. The following are extracts from the memorandum:

General Procedure.

When an American machine or pilot wishes to cross the International boundary and fly in Canada, notification should be sent, in advance, to the Secretary of the Air Board, Ottawa, giving the date of the proposed flight; the owner's name and address; the pilot's name and qualifications; the type of machine to be used; the route and duration of the proposed flight and the purpose for which it is being undertaken.

Military Aircraft.

In the case of military aircraft (see para. 124 Canadian Air Regulations) notification should be sent, as above, by the proper Military (or Naval) Authorities, giving the above particulars and asking that permission should be granted. The officer in charge of the machine should notify the Air Board on his first landing and last departure, and must report to Customs on arrival and departure.

Commercial Aircraft.

When a commercial aircraft wishes to enter Canadian territory, the owner should make application, in advance, forwarding at the same time a copy of the pilot's graduation or discharge certificate from the United States army or naval service and two passport photographs of the pilot. As there is no authority issuing pilots' certificates, other than the Army and Naval Air Services in the United States, and the great majority of pilots had served in either of these services during the War, it was decided to limit the privilege to pilots who had taken the course of training in these services. Exceptions are made in favor of civilian pilots who can produce proof of qualifications equal to those necessary to obtain a pilot's certificate in Canada.

Application for registration of the Aircraft, in accordance with the terms of the International Convention, must also be made and the registration markings must be painted on the machines. The Underwriters' Laboratories, it is understood, are allotting registration marks in accordance with the Convention, and their numbers are accepted in Canada. If a machine is not registered with them, the markings are allotted by the Air Board, in all cases commencing with the letters N-C. Full particulars of aircraft must be forwarded with the application for registration. Should the machine be of a type which has not yet been granted a certificate of airworthiness, an investigation of its design is made. If it is found to comply in all essentials with the standards approved in Canada, a type certificate is issued. If, on the other hand, it is below the standard called for in Canadian machines, permission is refused to fly it in Canada. The registration fee is \$5.00. The fee for a "type certificate" of airworthiness is \$25.00, and the certificate of airworthiness for an individual machine is \$5.00. Aircraft, engine, and journey log books should be carried on all machines entering Canada.

No commercial operations of any nature are permitted within Canada by United States machines, but they may carry goods or passengers from a point in the United States to a point in Canada, and vice versa.

Private Aircraft.

In the case of private aircraft, the pilot should forward two passport photographs of himself and a copy of his graduation or discharge certificate from the United States Air Service. The application for registration of aircraft should be made and registration markings painted on the machine in the same way as is called for in the case of commercial machines. The Secretary of the Air Board should be notified when machines enter or leave Canadian territory and customs clearance is to be made at the port of entry and departure. A private license does not allow for flying operations for remuneration or reward to be carried out in Canadian territory, nor is it necessary for a private aircraft to be certified airworthy.

In a note dated June 18, 1923 the British Ambassador invited attention to the expiration of the period during which American pilots and aircraft could enter Canada under existing conditions, and stated that if the United States desired a renewal of the agreement the Dominion Government would propose that the responsibility of certifying as to the airworthiness of American machines to be flown in Canada should be assumed by the United States Army or Navy air services. The agreement was extended. In a letter dated July 13, 1923 the Secretary of the Navy stated that the Navy Department willingly undertook to inspect any aircraft of a type similar to any type which had been accepted for use in the Naval aeronautics organization, if the owner should apply for a certificate of airworthiness, and that such certificate would be issued in case the result of inspection indicated that such action was warranted. The Secretary of the Navy stated that it was understood, however, that in conducting such inspections and issuing certificates of airworthiness, the Navy Department assumed no responsibility for any damage which might result from the operation of the aircraft in question. In a letter dated August 7, 1923 the Secretary of War stated that the War Department willingly undertook to have inspected by competent Air Service officers all aircraft the owners of which might apply for a certificate of airworthiness for the purpose of flying into Canadian territory. The Secretary of War stated that certificates of airworthiness would be issued by the Chief of Air Service to such applicants provided the condition of the aircraft warranted such action. It was stated that the War Department would not, however, in any case assume responsibility for damages to persons or property resulting from any accidents caused by aircraft not under its jurisdiction.

In a note dated October 12, 1923 the British Embassy stated that the arrangements made by the War and Navy Departments for the examination as to the airworthiness of aircraft entering

Canada was satisfactory to the Canadian Government, and that in the future owners of aircraft would be referred to either of these Departments in order that they might obtain the necessary certificate before crossing the border.

On April 4, 1927 the Department of State addressed a note to the Minister of the Dominion of Canada in which it was stated that since the passage of the Air Commerce Act of 1926 the Aeronautics Branch of the Department of Commerce had been engaged in preparing regulations for the licensing of pilots and aircraft and the general control of air navigation in this country, but that as this work had not been so far completed as to make it possible to suggest the final details of an agreement between the United States and Canada which would meet the needs of both countries in the premises, it was desired that the arrangement then in force be extended for another six month period, from the 30th of April, 1927.

In a note dated April 2, 1927 from the Canadian Legation which was not received until after the note of the Department of State of April 4 mentioned above had gone forward, the Legation invited attention to the arrangement with the United States in regard to international flying originally entered into in 1920 and stated that as this arrangement, which would expire on the 30th of April, 1927 was considered to be out of date the Legation had been requested by the competent authorities of the Dominion Government to represent that it might be thought desirable to supersede it by an agreement of a more formal nature. The Department of State replied on April 9, 1927 that it would await the receipt of a reply to its request for an extension as asked for on April 4, 1927, before taking further steps in the premises. In a note dated April 29, 1927, the Canadian Legation referred to the Department of State's notes of April 4 and April 9, 1927, and stated that it was in receipt of instructions to the effect that the competent authorities of the Government of Canada recommended the extension of the existing agreement for a period of six months from April 30, 1927, provided that, since the United States Government had passed legislation for the control of civil aviation, the agreement was made reciprocal and Canadian pilots and aircraft were admitted to the United States under the same conditions.—i. e. that the aircraft should carry nationality and registration markings; that they be certified as airworthy by the responsible Canadian authorities; that their pilots be licensed, and that they report to the United States customs and immigration authorities upon entering and before leaving. The note stated that the Government of Canada had observed

with satisfaction that the United States authorities recognized that the existing agreement was out of date and hoped shortly to be in a position to consider amended regulations to cover the flights of commercial aircraft between the two countries. The note stated that the Government of Canada was prepared to discuss this matter at any time.

In a note dated May 11, 1927 the Department of State informed the Minister of the Dominion of Canada that the Government of the United States gladly accepted the suggestions of the Canadian authorities that the agreement then existing be made reciprocal, and that it accordingly regarded the agreement as effective until October 31, 1927 unless modified earlier by mutual agreement. The agreement was kept in force after that date. While a reciprocal arrangement was agreed to in the note of May 11, 1927 it appears to have been of an informal character and of a more limited scope than the formal arrangement of 1929, now in force.

It will be noted that in a statement in regard to the requirements to be met by American non-government aircraft entering Canada, given to the press by the Department of State on August 8, 1927 references were made to functions of the Department of Commerce. Such references are found in paragraphs 1, 2, 3 (d) and 5 of the statement. Paragraphs 1 and 2 were as follows:

1. The aircraft must be registered and passed as airworthy by the United States Department of Commerce, Aeronautics Branch, and must bear the registration markings allotted it by that Branch preceded by the letter "N" placed on it in accordance with the Air Commerce Regulations of the Department of Commerce.

2. The pilot must be licensed by the United States Department of Commerce.

Paragraph 3 stated that permission to enter Canada must be secured in advance from the Secretary of the Canadian Air Board at Ottawa, and contained a statement as to the data to be furnished to that official. Sub-paragraph (d) stated that the pilot's license number or date of letter of authorization issued by the United States Department of Commerce should be furnished. Paragraph 5 was as follows:

The aircraft must carry aircraft, engine and journey logbooks, and the certificates of registration and airworthiness issued by the United States Department of Commerce. The pilot must have his license in his possession.

There were repeated in other portions of the press statement announcements made on previous occasions in regard to certain other requirements which had to be met by American pilots and aircraft entering Canada.

In a note dated October 31, 1927 from the Department of

External Affairs of Canada to the American Minister at Ottawa the Minister was informed that the air authorities of Canada had stated that the provisions contained in paragraph 3, of the statement above referred to, in regard to giving advance notice of contemplated flights, were no longer necessary, owing to the establishment of the licensing and registration system by the Aeronautics Branch of the Department of Commerce, provided the other conditions were met, although this information was required in 1920 when the original agreement was entered into. The Department of External Affairs of Canada stated that under the Canadian regulations all state aircraft other than military, customs and police aircraft were treated as commercial aircraft. It also indicated that special authorization would have to be obtained to permit American military aircraft to enter Canada.

The present arrangement between the United States and Canada, which was effected by a note dated August 29, 1929 from the Secretary of State and the reply of the Minister of the Dominion of Canada of October 22, 1929 provides for (1) the admission into the one country of civil aircraft of the other country; (2) the issuance by each country of pilot licenses to nationals of the other; and (3) the acceptance by each country of certificates of airworthiness in connection with aircraft imported from the other country as merchandise. With the exception of the provisions relating to the issuance of pilot licenses and the acceptance of certificates of airworthiness for aircraft imported as merchandise, which were new provisions, the reciprocal provisions of the present arrangement are substantially the same as the requirements which had to be met by American pilots and American Civil aircraft when entering Canada before the reciprocal arrangement was negotiated.

Throughout the period from 1920, when the Canadian Air Board provided facilities for American pilots and aircraft to enter Canada, to 1929, when the present reciprocal air navigation arrangement between the United States and Canada became effective, the aviation authorities in Canada appear to have been actuated by the desire to impose a minimum of restrictions on the entry of American pilots and aircraft into Canada, considering that during the greater part of this period the United States had not enacted legislation providing for the licensing of pilots and the granting of airworthiness certificates in connection with civil aviation.

This spirit of cooperation and the cordial relations which existed between the aviation authorities of the two countries did much to facilitate the negotiation of the air navigation arrangement between the United States and Canada which is now in force.